

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Edward Keith Dembry,

File No. 19-cv-0307 (ECT/LIB)

Petitioner,

**ORDER ACCEPTING REPORT
AND RECOMMENDATION**

v.

State of Minnesota,

Respondent.

Petitioner Edward Keith Dembry commenced this action pro se by filing a petition for a writ of habeas corpus. Pet. [ECF No. 1]. The case is now before the Court on a Report and Recommendation issued by Magistrate Judge Leo I. Brisbois on March 28, 2019. ECF No. 6. Magistrate Judge Brisbois recommends denying Dembry's petition as untimely. R&R at 6. Dembry filed objections to the Report and Recommendation. ECF No. 7. Respondent filed no response to those objections. Because Dembry has objected, the Court is required to review the Report and Recommendation de novo pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b)(3). The Court has undertaken that de novo review and has concluded that Magistrate Judge Brisbois's analysis and conclusions are correct. In particular, even if Dembry received the benefit of the prison-mailbox rule, and his petition is deemed filed on the day he purportedly delivered it to prison officials for filing and not on the date it was actually delivered to the clerk of court, his habeas petition is nevertheless untimely under 28 U.S.C. § 2244(d). *See* R&R at 2 n.5, 4–5. Furthermore, Dembry has made no showing that can avoid § 2244(d)'s time bar, either because the

applicable statute limitations should be equitably tolled or because he is actually innocent of the offense to which he pleaded guilty. *See generally* R&R at 5. Accordingly, Dembry's petition must be dismissed.

Therefore, based upon all of the files, records, and proceedings in the above-captioned matter, **IT IS HEREBY ORDERED** that:

1. The Objections to the Report and Recommendation are **OVERRULED** [ECF No. 7];
2. The Report and Recommendation [ECF No. 6] is **ACCEPTED** in full;
3. The Petition [ECF No. 1] is **DENIED** as untimely;
4. This action is **DISMISSED**; and
5. A certificate of appealability is **DENIED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 7, 2019

s/ Eric C. Tostrud
Eric C. Tostrud
United States District Court